

Assembly Bill No. 782

Passed the Assembly August 19, 2013

Chief Clerk of the Assembly

Passed the Senate August 15, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 782, Bocanegra. Alcoholic beverage control: licensees: returns.

Under the Alcoholic Beverage Control Act, a wholesaler or manufacturer may accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law provides for exceptions to that provision, including permitting the return of beer from a seasonal or temporary licensee or an annual licensee operating on a temporary basis, permitting the return of unsold and unopened beer from an organization that obtained a specified temporary license, and permitting the return of beer that is recalled or presents a health and safety issue as provided.

This bill would add to the above exceptions, to permit an on-sale retail licensee that obtained a caterer's permit to return unused and unopened beer, purchased for sale at the catered event, to the original selling licensee, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 23104.2 of the Business and Professions Code is amended to read:

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler

or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, "seasonal brand of beer" means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

(e) Notwithstanding the 15-day time limit for the return of beer described in subdivision (a), beer that is recalled or that is considered by a manufacturer, importer, or governmental entity to present health or safety issues if distributed, offered for sale, or sold in the state may be accepted for return at anytime from a retailer and be picked up by the seller of beer. The seller of beer may exchange the returned beer for identical product, if safe inventory is available, issue a deferred exchange memorandum showing the beer was picked up and is to be replaced when inventory is available, or issue a credit memorandum to the retailer for the returned beer. The seller of beer may exchange with the manufacturer or importer the returned beer and the seller of beer's inventory that was recalled or considered to present health or safety issues for identical product, if safe inventory is available, or the seller of beer shall receive a refund from or be issued a credit memorandum by the manufacturer or importer for the returned beer and seller of beer's inventory that was recalled or considered to present health or safety issues.

(f) Notwithstanding subdivision (a), a licensee may accept the return of unsold and unopened beer from an organization that obtained a temporary license pursuant to Section 24045 or 24045.1. The licensee may credit the account of the organization in an

amount not to exceed the original sales price of the returned beer, provided that the beer has been paid for in full.

(g) (1) Notwithstanding subdivision (a), an on-sale retail licensee that purchases beer for sale at an event for which a catering authorization is issued by the department pursuant to Section 23399 may return the unused and unopened beer to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization, provided the beer was purchased for use or sale only at that event and the on-sale retail licensee does not also provide any beer for use or sale at the event from its permanent licensed premises. The on-sale retail licensee holding the catering authorization shall record and maintain a record of the inventory of all unused and unopened beer to be returned at the conclusion of the catering event. The original selling licensee shall prepare an invoice to reflect the returned beer that shall reference the original sales invoice and shall provide the on-sale retail licensee holding the catering authorization with a copy of the invoice.

(2) Any beer returned pursuant to this subdivision must be returned to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization. The original selling licensee may credit the account of the on-sale retail licensee in an amount not to exceed the original sales price of the returned beer, provided the beer has been paid for in full.

Approved _____, 2013

Governor